IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE V.GIRI

FRIDAY, THE 24TH AUGUST 2007 / 2ND BHADRA 1929

FAO.No. 201 of 2007

AGAINST THE ORDER DATED 12/04/2007 IN EA.11/07,EP.74/00 IN ARC.7/1997 of SUB COURT, SULTHAN BATHERY
.....

APPELLANT/PETITIONER

K.K.MAMMUTTY, S/O. KUNHABDULLA,
AGED 59 YEARS, KOYAITHIKANDI VEEDU,
AGRICULTURIST, VARAMBATTA P.O., PADINHARATHARA.

BY ADV. SRI.GEORGE POONTHOTTAM

RESPONDENTS: RESPONDENTS
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1. THE PAYYANNUR SERVICE CO-OPERATIVE BANK LTD.NO.F.1401.

2. NORTH MALABAR DISTRICT CO-OPERATIVE SUPPLY AND MARKETING SOCIETY LTD.NO.F.1003.

3. SHEIK AND COMPANY,
MANAGING PARTNER, SHEIK USMAN, C.K.HOUSE,
KUPPADITHARA, P.O.MUNDAKUTTY.

BY ADVS. SRI.T.M.SREEDHARAN -- R3
SRI.T.M.SREEDHARAN
SRI.V.P.NARAYANAN
SMT.CELINE JOSEPH -- R2
SRI.M.SASINDRAN --- R1

THIS FIRST APPEAL FROM ORDERS HAVING BEEN FINALLY HEARD ON 24/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

tga

J.B.KOSHY & K.P.BALACHANDRAN, JJ.

F.A.O.NO.201 OF 2007 ()

Dated this the 19th day of July, 2007

O R D E R

KOSHY,J.

Issue notice by Special Messenger to respondents 1 and 2. Counsel for the 3rd respondent takes notice.

Property belonging to the 2nd respondent was put in auction, as per orders passed in E.P.No.74/2000 on the file of the Sub Judge's Court, Sulthan Bathery. Sale proclamation was published and the upset price fixed was Rs.75,00,000/-. Auction was conducted at 1.45 p.m. It is the contention of the petitioner that he came to the auction place and prepared to bid the same for Rs.1 crore. But by the time he reached, the bid was over. Therefore he fled an application under Order 21 Rule 90 of Code of Civil Procedure praying that auction conducted may be set aside. Meanwhile, the 3rd respondent, who was a successful bidder has already deposited the auction

price of Rs.75,06,500/- with documentation charges totalling to nearly Rs.85,00,000/-. It is the contention of the appellant that he came at the place of auction after fifteen minutes of the auction because the bus was late. He also pointed that in the notice exact time of auction was not mentioned. It is contended by the 3rd respondent that he has no locus standi at all for filing a petition under Order 21 Rule 90 of CPC. However, judgment debtor being a Co-operative Society, interest of the Society also should be looked into. In the above circumstances, interim stay as prayed for, is granted, if petitioner deposits Rs.1 crore within 30 days from today.

Post on 25.7.2007.

J.B.KOSHY, JUDGE

K.P.BALACHANDRAN, JUDGE

prp

J.B.KOSHY & K.P.BALACHANDRAN, JJ.

M.F.A.NO. OF 2006 ()

J U D G M E N T

2nd July, 2007